



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

| | | | |
|-----------------|------------------------|----------------|-----------------------|
| Date Amended: | 3/26/01 | Bill No: | AB 309 |
| Tax: | Sales and Use | Author: | Longville |
| Board Position: | Board-sponsored | Related Bills: | AB 2114 (2000) |

BILL SUMMARY

This bill would move the first point of retail sales tax prepayment on fuel to the rack to coincide with the imposition of the motor vehicle fuel tax.

ANALYSIS

Current Law

Under existing law, any distributor or broker (seller) of motor vehicle fuel, as defined in Part 2 (commencing with Section 7301) of the Revenue and Taxation Code, or any aircraft jet fuel dealer who sells aircraft jet fuel as defined by Section 7372 or the Revenue and Taxation Code, or any producer, importer or jobber (seller) who makes a sale of diesel fuel, as defined in Part 3 (commencing with Section 8601) or Part 31 (commencing with Section 60001) of the Revenue and Taxation Code, is required to collect prepayment of retail sales tax from the person to whom the fuel is sold. Generally, the types of fuels subject to the prepayment provisions include gasoline, aircraft jet fuel and diesel fuel. With the exception of the person making the retail sale of the fuel to the consumer, each seller of fuel is required to report and pay the prepayment amounts to the Board. Also, when the seller of fuel reports and pays his or her prepayment to the Board, the seller of fuel is allowed to claim a credit for the prepayment amount paid to his or her vendor. The person making the retail sale of the fuel to the consumer is allowed to claim a credit for the prepayment amount paid to his or her vendor when reporting the retail sales tax due on the retail sale of the fuel.

Proposed Law

This bill would move the first point of retail sales tax prepayment on fuel to the rack to coincide with the imposition of the motor vehicle fuel tax.

Background

The prepayment of retail sales tax on motor vehicle fuel was added by the passage of Senate Bill 1610 (Ch. 214, Stats. 1986). Prior to the passage of SB 1610, sales tax on fuel was only collected on the final retail sale. Before the prepayment of retail sales tax on motor vehicle fuel requirement, tax evasion by service stations was a problem. Due to the number of retail service stations in the state, and the nature of operations, many service stations would either fail to obtain the necessary seller's permit, or they would obtain the permit but fail to report the entire tax liability from their retail sales. By requiring the prepayment of the retail sales tax on motor vehicle fuel, 80 percent of the retail sales tax is collected in advance. Since the retailer is required to prepay a large

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

portion of their sales tax liability, each retailer has an incentive to report the correct sales amount and recoup the tax already paid to their supplier. Also, information on how many gallons of fuel are sold to each vendor is documented. Board staff uses this information to trace the flow of fuel from seller to seller and ultimately reconcile those numbers with the final retail sale.

Until January 1, 2002, the excise tax on gasoline is imposed upon distributors for the privilege of distributing gasoline in this state. Distribution includes refining, producing, blending, or compounding gasoline in this state coupled with the sale, donation, consignment for sale, barter, or use of the fuel in this state. Distribution also includes importing into this state, coupled with the sale, donation, consignment for sale, barter, or use of the fuel in this state. The first distribution of gasoline generally occurs at the highest point in the distribution chain, before the gasoline leaves the refinery by way of a terminal rack or pipeline.

By contrast, the collection point of the excise tax on diesel fuel is at the refinery or terminal rack level. The rack is a level in the distribution chain at a refinery or at a storage and distribution facility at the end of a pipeline where gasoline, aircraft jet fuel, or diesel fuel are delivered through a mechanism (the rack as it leaves the refinery or storage facility) into ground transportation, such as a truck, trailer, or railroad car.

Beginning January 1, 2002, Assembly Bill 2114 (Ch. 1053, Stats 2000) shifts the imposition of the excise tax on gasoline from the point of first distribution to the rack. Moving the point of taxation to the rack will have several benefits. First, the point of taxation will be consistent with the diesel fuel tax law and the federal excise tax law. Also, with the implementation of the Excise Fuel Information Reporting System (ExFIRS) by the Internal Revenue Service, there is a federal tracking system that will be a tremendous aid in deterring tax evasion for any state that taxes fuel at the rack.

COMMENTS

1. **Sponsor and Purpose.** The purpose of this Board-sponsored measure is to simplify the payment and reporting of the prepaid sales tax on fuel.
2. **Summary of March 26 amendments.** After discussing the language of the bill with industry representatives, minor amendments were made to address their concerns which consisted of replacing the term "jobber" with "wholesaler," revising the definition of a sale, adding credit provisions for situations where tax is paid twice or is not due, and adding language to clarify when a bad debt deduction may be taken.
3. **This bill will simplify reporting for fuel sellers.** Imposing the retail sales tax prepayment on fuel at the same point as the motor vehicle fuel tax would simplify payment and reporting since the imposition of the prepayment of sales tax would coincide with the imposition of the state motor vehicle fuel tax and the federal excise tax imposed on motor vehicle fuel.
4. **The provisions of this bill could help reduce tax evasion.** The Board would be able to utilize ExFIRS, a federal tracking system, to track prepayment of retail sales tax on fuel to prevent tax evasion.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

COST ESTIMATE

Some additional administrative workload would be realized as a result of notifying affected sellers, responding to inquiries and revising returns and regulations. A detailed cost estimate of the workload impact is pending.

REVENUE ESTIMATE

The provisions of this bill are expected to have no revenue impact.

| | | | |
|-----------------------|-------------------|----------|--------|
| Analysis prepared by: | Bradley E. Miller | 445-6662 | 4/1601 |
| Contact: | Margaret S. Shedd | 322-2376 | |

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.